

PT 95-25

Tax Type: PROPERTY TAX

Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

GARDENING AND ECONOMICAL)
 TRAINING, INC.)
 Applicant) Docket # 91-16-827
) Parcel Index # 20-26-106-031
 v.)
) Barbara S. Rowe
THE DEPARTMENT OF REVENUE) Administrative Law Judge
OF THE STATE OF ILLINOIS)
)

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: The Cook County Board of Review filed an exemption application with the Illinois Department of Revenue (the Department) for Gardening and Economical Training, Inc. (the applicant). The Department denied the application finding that the property was not in exempt ownership and use. The applicant filed a protest and requested a hearing in the matter. The hearing was held and it is recommended that the Director of the Department find that the parcel herein question was not in exempt ownership and use for the taxable year in question.

FINDINGS OF FACT:

1. The Department's position in this matter, namely that Cook County parcel index number 20-26-106-031 was not in exempt ownership and use was established by admission into evidence of Department's Group Exhibits 1 through 6.

2. On April 21, 1992, Cook County Board of Appeals on a Board of Appeals statement of Facts in Exemption Application filed with the board by the applicant recommended a full year exemption for the parcel herein question. The Board forwarded the application to the Department where it

was received on July 24, 1992 (Department's Group Exhibit 1).

3. On October 22, 1992, the Department denied the exemption finding:
THE PRIMARY USE OF THE PROPERTY IS NOT CHARITABLE.

THE PROPERTY IS NOT IN EXEMPT USE (Department's Exhibit 2).

4. On November 9, 1992, the applicant timely requested a hearing in this matter (Department's Exhibit 3).

5. On September 3, 1994, the Department issued a Notice of Hearing regarding the tax exemption requested for this parcel. The Department requested additional information from the applicant on the notice (Department's Exhibit 4).

6. The additional information provided by the applicant pursuant to the notice was submitted to the record (Department's Group Exhibit 5).

7. The applicant acquired the parcel herein issue by a quit claim deed dated August 8, 1990 (Department's Group Exhibit 1 at 4).

8. The applicant was incorporated under the General Not For Profit Corporation Act of the State of Illinois on May 1, 1978. The purposes for which the applicant was incorporated are:

- A. To engage in and to receive, maintain and expend funds for benevolent, charitable, scientific, research and educational purposes;
- B. To conduct and maintain a training, educational and research program for low income persons in vegetable farming, food processing, and marketing of garden produce; to provide education and training in skills needed to manage and distribute the marketing of garden produce; to develop efficient family food planning; to design and construct experimental greenhouses, canning facilities, and housing facilities for program participants of low income; and to provide camping and recreational programs for participants in the program
- C. No part of the net earnings or funds of the Corporation shall inure to the benefit of any member, director or officer of the Corporation, or any private individual or party (except that reasonable compensation may be paid for services rendered to or for the Corporation affecting one or more of its purposes), and no member, director or officer of the Corporation, and no private individual or party shall be entitled to share in the distribution of any of the corporate assets upon dissolution of the Corporation.

D. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting, to influence legislation, and the Corporation shall not participate in or intervene in (including the publication or distribution of statements) any political campaign on behalf of any candidate for public office (Department's Exhibit 1 at 20).

9. The applicant is exempt from payment of federal income tax pursuant to a 501(c)(3) designation from the Internal Revenue Service (Department's Exhibit 1 at 35).

10. Located on the parcel herein question is a two-story house (Department's Exhibit 1 at 33).

11. At an undisclosed time a fire occurred on the property that rendered the house unfit for human occupation (Transcript (Tr.)14-15).

12. An affidavit submitted by the applicant gave a time chart as to the uses of the property from September 1, 1990 until December 31, 1991. The uses of the property by the applicant during the taxable year in question were for demolition and construction (Department's Exhibit 1 at 5-6).

13. Applicant engaged ten construction apprentices to help with the demolition and construction (Tr. 15-16; Department's Exhibit 5 at 20).

14. The applicant attempts to train families to become functioning members of society. The program components of the applicant are large vegetable farms, family life education community center, vocational training programs, recreation, marketing and research (Department's Exhibit 1 at 7-12).

15. Applicant testified that their philosophy is:

So certain things -- injustice is going to have to be redone or rephrased, because on thing that I learned is that children speak the truth, and they are definitely not interested in sex, period. But as Sigmund Freud said, and I would like to quote, one way or the other, everything we do is related to sex, because what we really teach and the bottom line of Gardening & Economical Training as being charitable and being humble is that men and women are not equal but they are equally as important. They don't share the same world, but they do share the same environment, and

they must learn to live in harmony and peace with each other.

There is a legitimate way and an illegitimate way of doing everything, and the law only respects the legitimate way of doing things.

We like to teach marriage. We have had a success rate of getting young folks married. And like I say, everybody have their own personal definition of justice and charitable, but we have a success rate in marriage and keeping families together. And to do it in a wholesome clean way, you have to respect the law.

That's the bottom line of what Gardening & Economical training represents, husbandry, because as we teach our students, one of the main things which is the problem with education and with our society is they have learned to respect the law and you cannot claim anything unless you are legitimate and must be claimed by your father's name and the military do not respect common law marriages. Everything must be done legally to maintain a free country. That is all based upon the heart (Tr. 22-24).

CONCLUSIONS OF LAW: Article IX, 6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The statutes of Illinois have provisions for property tax exemptions. In particular, 35 ILCS 205/19.7 (1992 State Bar Edition), (1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.7), exempts certain property from taxation in part as follows:

All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States, all property of old people's homes and facilities for the developmentally disabled,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;....All old people's homes or homes for the aged or facilities for the developmentally disabled...shall qualify for the exemption stated herein if upon making an application for such exemption, the applicant provides affirmative evidence that such home or facility...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home or facility...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's inability to pay,...

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149

(1968), the Illinois Supreme Court laid down six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines are as follows:

- (1) The benefits derived are for an indefinite number of persons;
- (2) The organization has no capital, capital stock or shareholders, and does not profit from the enterprise;
- (3) Funds are derived mainly from private and public charity, and are held in trust for the objectives and purposes expressed in its charter;
- (4) Charity is dispensed to all who need and apply for it;
- (5) No obstacles are placed in the way of those seeking the benefits; and
- (6) The primary use of the property is for charitable purposes.

In *Crerar v. Williams*, 145 Ill. 625 (1893), the Illinois Supreme Court defined charity as follows:

A charity, in a legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves for life, or by erecting or maintaining public government. It is immaterial whether the purpose is called charitable in the gift itself, if it is so described as to show that it is charitable in nature.

In the case of *People ex. rel. Pearsall v. The Catholic Bishop of Chicago*, 311 Ill. 11 (1924), the Illinois Supreme Court held that the mere fact that a property was intended to be used for an exempt purpose was not sufficient to exempt said property. The Court required that the actual primary exempt use must have begun for the property to be exempt.

Although the goals and actions of the applicant are very commendable, they do not qualify for a charitable property tax exemption based upon the facts presented and the law above.

It is therefore recommended that the Director Department of Revenue deny the request for the property tax exemption submitted by the applicant. It is recommended that Cook County parcel index number 20-26-106-031 remain

on the tax rolls for 1991 assessment year and be assessed to the applicant.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

April 15, 1995